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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA)
14)
15 v.)
16)
17 JULIO HERNANDEZ,)
18 Defendant.)
19)
20)

No. 3-09-70315-BZ (EMC)

STIPULATION AND ~~PROPOSED~~
ORDER DOCUMENTING WAIVER

21 With the agreement of the parties, and with the consent of the defendant, the Court enters
22 this order vacating the preliminary hearing date of July 24, 2009, setting a new preliminary
23 hearing date on August 21, 2009, at 9:30 a.m., before the duty magistrate judge, extending the
24 time for the preliminary hearing under Federal Rule of Criminal Procedure 5.1, and excluding
25 time under the Speedy Trial Act from the date of this stipulation to August 21, 2009. The
26 parties agree and stipulate, and the Court finds and holds, as follows:

27 1. The defendant, Julio Hernandez, was charged in a complaint dated April 3, 2009
28 with one count of conspiracy to commit murder in aid of racketeering, one count of conspiracy to

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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NORTHERN DISTRICT OF CALIFORNIA

1 commit assault with a dangerous weapon in aid of racketeering, and one count of using or
2 possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§
3 1959(a)(5) and (a)(6), 924(c), and 2. Hernandez was transferred into federal custody on April 10,
4 2009, and presented to Magistrate Judge Maria-Elena James on that day. On April 14, 2009,
5 Hernandez appeared before Magistrate Judge Bernard Zimmerman and Gilbert Eisenberg, Esq.,
6 was appointed to represent him. The defendant waived his right to seek bail without prejudice to
7 any future bail applications, and Judge Zimmerman also scheduled a preliminary hearing date for
8 April 17, 2009. The defendant remains detained pending further proceedings.

9 2. Following the appointment of Mr. Eisenberg, the parties have been conferring
10 regarding possible dispositions of this matter, and as a result, the Court, at the request of both
11 parties, extended the preliminary hearing date to May 8, 2009, June 12, 2009, June 26, 2009, July
12 10, 2009, and, most recently, July 24, 2009. Since then, the parties' have continued to pursue
13 their discussions with the goal of reaching a disposition prior to the filing of formal charges
14 against the defendant and the defense has also been conducting its own investigation. However,
15 the parties have not yet been able to finalize these discussions and the defense is still pursuing its
16 own investigation. In addition, the Government has some materials that it will be providing to
17 the defense. Accordingly, the parties have asked the Court to extend the preliminary hearing date
18 to August 21, 2009, pursuant to Federal Rule of Criminal Procedure 5.1, and excluding the time
19 under the Speedy Trial Act, 18 U.S.C. § 3161.

20 3. Taking into the account the public interest in the prompt disposition of criminal
21 cases, the above-stated ground is good cause for extending the time limit for a preliminary
22 hearing under Federal Rule of Criminal Procedure 5.1, for the filing period for an indictment, and
23 for excluding time under the Speedy Trial Act. Failure to grant the continuance would deny the
24 defense time for effective preparation and for seeking disposition of this matter on agreed-upon
25 terms.

26 4. Accordingly, with the consent of the defendant, the Court hereby: (a) vacates the
27 July 24, 2009 preliminary hearing date and extends the time for a preliminary hearing until
28 August 21, 2009, before the duty magistrate judge, at 9:30 a.m.; and (b) orders that the period

1 from the date of this order to August 21, 2009 be excluded from the time period for preliminary
2 hearings under Federal Rule of Criminal Procedure 5.1 and from Speedy Trial Act calculations
3 under 18 U.S.C. § 3161(h)(7)(A) & (B)(iv).

4 SO STIPULATED:

5
6 DATED: July 23, 2009

/s/

GILBERT EISENBERG, ESQ.
Attorney for JULIO HERNANDEZ

8
9 DATED: July 23, 2009

/s/

W.S. WILSON LEUNG
Assistant United States Attorney

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11
12 IT IS SO ORDERED.

13 DATED: July 24, 2009



HON. EDWARD M. CHEN
United States Magistrate Judge